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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re SIMON F., a Person Coming Under
the Juvenile Court Law.

B241491
(Los Angeles County
Super. Ct. No. CK67698)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ELIZABETH F.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Sherri S. Sobel, Referee. Affirmed.

Suzanne Davidson, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Jeanette Cauble, Senior Deputy County Counsel, for Plaintiff and Respondent.

Elizabeth F. (Mother) appeals from the juvenile court's May 16, 2012 order placing Simon F. with Mr. and Mrs. H. under a plan of legal guardianship and terminating jurisdiction over Simon. Mother contends that the juvenile court abused its discretion by not selecting a new legal guardian for Simon or, alternatively, not continuing jurisdiction over Simon. The Los Angeles County Department of Children and Family Services (DCFS) contends that the court acted within its discretion by ordering the termination of jurisdiction over Simon after supervising the legal guardianship for six months. We conclude that the court did not abuse its discretion by ordering Simon placed with Mr. and Mrs. H. under a plan of legal guardianship and terminating jurisdiction over Simon. We affirm the order.

BACKGROUND

On October 27, 2009, DCFS filed a petition on behalf of Simon, born in 2002, and his half siblings Raven F., River F., and Julian F., who are not parties to this appeal. As amended and sustained on January 11, 2010, paragraph b-1 of the petition alleged under Welfare and Institutions Code section 300, subdivision (b) (failure to protect) that Mother has a history of illicit drug and alcohol abuse; as amended and sustained, paragraph b-2 of the petition alleged under section 300, subdivision (b) that Simon is autistic and has special needs and Mother "was unable" to obtain appropriate dental treatment for his root canal.¹

The events leading up to the filing of the current petition are as follows. In 2007, the juvenile court assumed jurisdiction over Simon, Raven, River, and Julian, sustaining allegations under section 300, subdivision (b) based on Mother's history of substance abuse, failure to protect the minors from physical abuse, and failure to provide appropriate care for Simon. The minors were returned to Mother's care and jurisdiction was terminated on January 6, 2009.

On September 20, 2009, DCFS received a referral that Mother was intoxicated and unable to care for the minors. DCFS reported that Mother abused drugs and alcohol;

¹ Undesignated statutory references are to the Welfare and Institutions Code.

neglected the minors' medical and dental needs; did not feed the minors regularly; and did not provide Simon with lunch or money to buy lunch at school. The minors were detained on October 27, 2009, and placed in foster care. Simon was autistic; had significant delays in his social and emotional development; was very easily frustrated, scared, and over-stimulated; and was aggressive toward others, biting and scratching if he was not understood. Simon was placed with Mr. and Mrs. H., "a married couple who operate 'Free To Be Programs', a Foster Family Agency approved by DCFS and Regional Center." Simon was observed to interact well with Mr. and Mrs. H., who "have shown concern and interest in his health and safety and are able to respond to his needs including following through on treatment and intervention recommendations." Mr. and Mrs. H.'s five children and six adopted children also lived in the home.

On January 11, 2010, the juvenile court declared the minors dependent children of the court and ordered Mother to participate in drug counseling; "parenting" counseling; and counseling for parents with autistic children. The court ordered Mother to attend Alcoholics Anonymous or Narcotics Anonymous meetings twice a week and to participate in random drug and alcohol testing.

Mother told DCFS that in May 2010 she had found bruises on Simon's back when she had undressed him during a visit at the home of Mr. and Mrs. H. She also complained that the house was not clean and there were dogs in the house. When DCFS told Mother of Mrs. H.'s explanation that "Simon is very quick and very athletic, that he jumps, runs, and plays very rough with other children in the home" and that "Simon is the most aggressive compared to the rest of the children in her home," Mother was dissatisfied and reported her suspicions of child abuse to the "Child Abuse Hot Line." Investigators from the "Child Abuse Hot Line" determined that the report of child abuse was unfounded. DCFS concluded that "removing Simon from the environment that helped him to progress would not be in his best interests." Subsequently, due to a "conflict" between Mother and Mrs. H., Mother's visits with Simon were moved to the DCFS office. At a July 12, 2010 status review hearing, the juvenile court ordered DCFS to investigate Mother's allegations that when she had called a "Hotline" regarding her

complaints about Mr. and Mrs. H., the “Hotline” investigators found “at least 11 violations, including holes in the wall.”

On January 11, 2010, the amended section 300 petition was sustained. In the meantime, Simon’s tantrums had decreased; he had improved in his ability to communicate; and he had become toilet trained. Simon’s improvement was attributed to the structured and stable home environment provided by Mr. and Mrs. H., “who have a wealth of experience in working with children with similar behavioral, mental and emotional needs and challenges.” At the home of Mr. and Mrs. H., Simon had made “significant progress in his placement where he is receiving appropriate services, supervision and encouragement, where he is learning new skills and becoming more independent.” And Simon had made progress at school by working with a one-on-one behavioral aide. When Simon had been living with Mother, his progress had been minimal because, even though he had been receiving the same services, Mother had not consistently reinforced what she had been taught by the providers. After Mother failed to act in Simon’s best interest by disagreeing with an Individualized Educational Program recommendation that Simon continue to be assigned a one-on-one behavioral aide, the juvenile court limited Mother’s right to make educational decisions for Simon.

In January 2011, DCFS reported that after December 2010, Simon’s behavior “started to deteriorate” and he attacked, bit, scratched, and kicked children and staff at Mr. and Mrs. H.’s home. He was hospitalized on December 22, 2010. After he was discharged and returned to Mr. and Mrs. H.’s home, Simon was “back to his usual behavior.” The juvenile court ordered that Mother’s visits with Simon remain monitored and that Mother visit him without his half siblings because Simon was “in very bad shape.” Subsequently, Simon’s behavior improved and he “was learning new things, he was using single words to express what he wants and his aggression was within normal limits.” His social and cognitive skills also improved. Mother continued to be dissatisfied with Simon’s placement and wanted him placed somewhere else.

Meanwhile, Mother completed all court-ordered programs and submitted to random drug and alcohol testing, for which she tested negative. But Mother told DCFS

that she was depressed, she could not support herself or the minors, and she could not “bear the responsibility of taking care of them, provide, parent and support them financially, emotionally and physically.” Mother had received mental health services, including medication, which did not “stabilize” her mental health. Mother, who was living in a warehouse until January 3, 2011, and thereafter became homeless, did not show up to an appointment with a mental health center to get assistance with housing and mental health services. In April 2011, during an unmonitored visit with Raven and River, Mother drank a bottle of tequila in front of them, became drunk, and crumpled Raven’s homework and threw it on the floor. They became frightened and requested that their caregivers retrieve them.

On May 4, 2011, Mother filed a statement with the juvenile court that she wanted Simon to remain with Mr. and Mrs. H. because she believed the problems in the home had been resolved. At a contested 18-month status review hearing on May 4, 2011, Simon’s counsel stated that “[t]here is a small problem with Simon’s placement at this point, but I think that will be worked out.” After hearing argument, the court terminated reunification services for Mother and the fathers of Raven, River, and Julian. Subsequently, Mother and the father of Julian filed a petition for an extraordinary writ, which we denied on August 1, 2011. (*Elizabeth F. v. Superior Court* (Aug. 1, 2011, B233095) [nonpub. opn.])

In the meantime, the results of the DCFS investigation of Mr. and Mrs. H. revealed that they had “complied with the standards set forth by the County of Los Angeles in order to have Simon placed with them” through Regional Services and that previously Mr. and Mrs. H. had been “livescanned.” But until the home was approved by DCFS for foster care placement, an adoptive home study could not be initiated.

In a last-minute information prepared for the August 31, 2011 section 366.26 hearing, DCFS reported that Mr. and Mrs. H. had been denied for foster care placement “due to having too many prior DCFS referrals of abuse/neglect.” DCFS was reviewing the referral history to determine whether the prior referrals presented a safety risk to Simon. In the interim, Simon would remain at the home of Mr. and Mrs. H. because

“there is a current Court order not to remove the child” from their home. At the hearing, the juvenile court stated that as to Simon, DCFS “wanted to do a termination and adoption. He does have special needs, but apparently the home could not be approved. If the home could not be approved for adoption, how is it approved for legal guardianship? I don’t get that. Doesn’t make any sense to me. [¶] Given the ages of the children, I do think that legal guardianship for all is probably a better plan.” Later, the court stated that adoption “has been denied” and “I’m not moving him.” Simon’s counsel stated that she thought adoption had not been “absolutely denied” and that DCFS was “trying to work with him.” When asked by Simon’s counsel if she should obtain the “paperwork for guardianship for Simon,” the court replied, “Talk to the social worker and caretakers for Simon and see where we are.”

At the October 26, 2011 guardianship hearing, Simon’s counsel informed the juvenile court that Mr. and Mrs. H. were licensed for special needs children; Mr. and Mrs. H. were legal guardians for another special needs child and were receiving foster care money; and Mr. and Mrs. H. “do want to become guardians of Simon.”

Subsequently, DCFS reported that it would not initiate an adoptive home study for Mr. and Mrs. H. because they had “nine DCFS referrals against them” for physical abuse and general neglect; two referrals out of the nine were substantiated for sexual abuse “on 6/11/11, and 11/1/10”; the Adoption and Safe Families Act (ASFA)² unit had denied their home “for placement” based on child safety issues; and Mr. and Mrs. H. were not compliant with “Community Care Licensing regulations.” Also, Mr. and Mrs. H. “opted to further pursue resolving the issues with the ASFA unit instead of focusing on adoption

² “AFDC–FC refers to Aid to Families with Dependent Children–Foster Care, which is funding for foster care and relative care maintenance. (42 U.S.C. § 670 et seq.) The term ‘ASFA’ refers to the Adoption and Safe Families Act of 1997, which establishes the federal guidelines for foster care and relative care placements. (*Ibid.*) The approval process for securing AFDC–FC funds is colloquially called ‘ASFA approval,’ which is required before a caregiver may receive AFDC–FC funds.” (*In re Darlene T.* (2008) 163 Cal.App.4th 929, 932, fn. 1.)

with Simon at this time.” DCFS stated that “per DCFS policy, legal guardianship can not be recommended without ASFA clearance. Therefore, Simon remains placed in Mr. and Mrs. [H.’s] home with a current Court order. At this time DCFS can only recommend a plan of adoption with a non-related caregiver.”

At the November 16, 2011 continued guardianship hearing, the juvenile court initially appointed Mr. and Mrs. H. as legal guardians of Simon and terminated jurisdiction. DCFS then stated that it could not approve the guardianship with Mr. and Mrs. H. “because there is a lot of referrals in the home. . . . They’re trying to work with ASFA.” The court noted that it had “read the wrong letter. This is extremely upsetting. My notes to myself this morning were get him out of this home.” Simon’s counsel stated that she had submitted guardianship papers for Simon. The court noted that of nine emergency response referrals against Mr. and Mrs. H., two had been substantiated for sexual abuse; Mr. and Mrs. H. are “not compliant with community care licensing”; and the “home study cannot be approved.” Simon’s counsel stated that Mr. and Mrs. H. are licensed by the state; the children in their home have “very serious situations”; “[p]eople who have these kind of children often have many referrals to the Department”; and that was the first she had heard that any of the allegations were substantiated. Over DCFS’s objection, the court then appointed Mr. and Mrs. H. legal guardians and ordered that the case remain “open for six months for [DCFS] to finish its investigation.” The court stated, “I’m ordering unannounced visits from [DCFS] during that time frame. And, if everything checks out, we’ll get out. And, if not, we’ll deal with it then.” The court set a review hearing for May 16, 2012.

On May 16, 2012, DCFS reported that it had made “monthly scheduled and unannounced” visits to the home of Mr. and Mrs. H. and had observed Simon “playing, eating, drawing, watching [a] children’s program on TV and during these visits no safety concerns were observed.” DCFS reported that Simon was “adjusted” in the home; he was very attached to Mrs. H.; Simon listened to Mrs. H. and other adults in the home; Simon had been living in the home since 2009 and “with time and much diligent work, nurturing and persistence on the part of Legal Guardians and staff, Simon’s behavior, his

communication and life skills have improved. His tantrums [decreased] from multiple times a day to one or two a day. Simon is constantly learning new things, using single words to express what he wants, to say ‘thank you,’ ‘open,’ ‘help,’ and he is becoming more self-sufficient. For example, he can open [the refrigerator] door and pour himself juice in a cup.” DCFS also stated, “Simon is well cared for, he is learning independent skills such as using the bathroom on his own, taking a bath with minimal supervision, taking some simple food from cupboard or refrigerator. The caregivers/Legal Guardians love and patiently care for Simon in ways that allow him to grow without fear if he makes mistakes, express what he wants and be as functional and independent as his condition allows him to be. There are no child safety concerns and the child is well adjusted and remains stable in the care of the Guardians.” DCFS recommended termination of jurisdiction.

At the hearing on May 16, 2012, Mother objected to terminating jurisdiction because she wanted to file a section 388 petition to “get” “her children back.” The juvenile court noted Mother could file a petition at any time until Simon turned 18 years old and terminated jurisdiction over Simon.

Mother appealed from the juvenile court’s May 16, 2012 order terminating jurisdiction over Simon with the legal guardianship in place.

DISCUSSION

The juvenile court did not abuse its discretion by not selecting new legal guardians for Simon and by terminating jurisdiction

Mother contends that the juvenile court abused its discretion by not selecting new legal guardians for Simon or, alternatively, not continuing jurisdiction over Simon. We conclude that the court did not abuse its discretion.

“A legal guardianship may . . . be created following a parent’s failure to reunify with a child. When this occurs, section 366.26, subdivision (a)(3), provides that, as one of several options for permanency planning, the juvenile court may appoint a guardian for a dependent child and order that letters of guardianship issue.” (*In re Carlos E.* (2005) 129 Cal.App.4th 1408, 1417.) “[A] guardianship may be selected as the permanent plan

where termination of parental rights and adoption are not in the child's best interests, or termination of parental rights would be detrimental to the child. (§ 366.26, subd. (c)(1).)" (*In re R.N.* (2009) 178 Cal.App.4th 557, 564.)

When a juvenile court orders legal guardianship, the court shall retain jurisdiction over the child until the legal guardianship is established. (§ 366.3, subd. (a).) "Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the legal guardianship, as authorized by Section 366.4." (§ 366.3, subd. (a).) The decision whether to terminate jurisdiction falls within the sound discretion of the juvenile court. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318; *In re Twighla T.* (1992) 4 Cal.App.4th 799, 806.)

We initially note that Mother's counsel, who was present at the November 16, 2011 guardianship hearing, did not object to the juvenile court's order appointing Mr. and Mrs. H. as legal guardians of Simon and retaining jurisdiction for six months. And at the May 16, 2012 hearing, Mother objected to terminating jurisdiction because she wanted to file a section 388 petition to "get" "her children back," and not because of the referrals against Mr. and Mrs. H. or Simon's special needs. Nor, at that time, did Mother request the appointment of different legal guardians.

On appeal, Mother contends that the juvenile court's order appointing Mr. and Mrs. H. legal guardians over Simon and terminating jurisdiction was not in Simon's best interests because nine emergency response referrals had been made with respect to Mr. and Mrs. H., of which two were substantiated for sexual abuse in 2010 and 2011; DCFS denied the home of "[Mr. and Mrs. H.] for adoption due to child safety issues"; Mr. and Mrs. H. were not compliant with licensing regulations; and even though DCFS "observed no safety concerns during six visits to the home, that did not ensure nine-year-old Simon's long-term well being in the home, especially considering the fact he was autistic and had very poor communication skills."

We conclude the juvenile court did not abuse its discretion on May 16, 2012, in ordering Mr. and Mrs. H. appointed legal guardians over Simon and terminating

jurisdiction. (*See In re Twighla T., supra*, 4 Cal.App.4th at p. 806 [juvenile court did not abuse discretion in determining that continuing dependency jurisdiction was not necessary under circumstances].) Simon had flourished under the care of Mr. and Mrs. H., “who have a wealth of experience in working with children with similar behavioral, mental and emotional needs and challenges.” Simon’s decreasing tantrums and improvement in his ability to communicate were attributed to the structured and stable home environment provided by Mr. and Mrs. H., “where he is receiving appropriate services, supervision and encouragement [and] where he is learning new skills and becoming more independent.” After his release from the hospital in December 2010, Simon’s behavior and social and cognitive skills improved.

Nevertheless, Mother urges that the juvenile court expressed concern over Simon’s placement with Mr. and Mrs. H. several times. But in appointing Mr. and Mrs. H. legal guardians of Simon, the court took into consideration Simon’s counsel’s arguments that Mr. and Mrs. H. are licensed by the state; the children in their home have “very serious situations”; “[p]eople who have these kind of children often have many referrals to the Department”; and Simon’s counsel had been unaware that any of the allegations had been substantiated.

And DCFS subsequently recommended termination of jurisdiction. While Mother questions the adequacy of the number of visits DCFS made to the home, she has not established that DCFS did not make a thorough investigation and report of the home. DCFS reported that it had made “monthly scheduled and unannounced” visits to the home of Mr. and Mrs. H.; observed no safety concerns; and had observed Simon was “adjusted” in the home, was very attached to Mrs. H., and listened to Mrs. H. and other adults in the home. DCFS reported that Mr. and Mrs. H. loved and patiently cared for Simon, who had improved his behavior, communication, and life skills while decreasing his tantrums. DCFS reported “Simon is well cared for, he is learning independent skills such as using the bathroom on his own, taking a bath with minimal supervision, taking some simple food from cupboard or refrigerator. The caregivers/Legal Guardians love and patiently care for Simon in ways that allow him to grow without fear if he makes

mistakes, express what he wants and be as functional and independent as his condition allows him to be.”

Also, the record does not clarify whether the substantiated allegations of abuse were perpetrated by Mr. and Mrs. H., staff members, or former staff members. And there is no evidence that the juvenile court had not been apprised of the details regarding the substantiated allegations of sexual abuse. Further, in May 2011, Mother believed that any problems in the home had been resolved. And as of August 31, 2011, DCFS was aware of the referrals but had not identified a safety risk to Simon. As stated, DCFS did not uncover any safety concerns about Simon during scheduled monthly visits and unannounced visits during the six months of legal guardianship, instead recommending termination of jurisdiction and concluding that Simon was well-adjusted and thriving in the home of Mr. and Mrs. H., who provided love and care for him and met his special needs. Finally, as the juvenile court noted, after termination of dependency jurisdiction, the court retains jurisdiction over the child as a ward of the legal guardianship. (§ 366.3, subd. (a).) Thus, Mother has the option of petitioning for a change of circumstance or termination of guardianship until Simon reaches the age of 18.

We conclude the juvenile court did not abuse its discretion by not selecting new legal guardians for Simon and by terminating jurisdiction.

DISPOSITION

The juvenile court’s order terminating jurisdiction is affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

JOHNSON, J.